

applicable trends and retention experience arising from CareFirst's business planning and underwriting process.

(c) From and after the date hereof and subject to the terms of that certain Confidentiality Agreement by and between the parties hereto, dated December 8, 2000, CareFirst shall (and shall cause its subsidiaries to) provide Purchaser reasonable access during regular business hours to its books, records, offices, personnel, counsel, accountants and actuaries as may be reasonably requested; provided, however, that (a) CareFirst shall not be compelled to provide any customer-specific information pursuant to this Section and (b) no investigation made pursuant to this Section shall unreasonably interfere with the operation or conduct of business of CareFirst.

### **Section 6.3. Transfer Taxes.**

All sales or transfer taxes, including stock transfer taxes, document recording fees, real property transfer taxes, and excise taxes, arising out of or in connection with the consummation of the Merger shall be paid by Purchaser. All such taxes or fees arising out of or in connection with the Conversion shall be paid by CareFirst.

### **Section 6.4. Preparation of Supporting Documents.**

In addition to such actions as the parties may otherwise be required to take under this Agreement or applicable law in order to consummate this Agreement and the transactions contemplated hereby, the parties shall take such action, shall furnish such information, and shall prepare, or cooperate in preparing, and execute and deliver such certificates, agreements and other instruments as the other party may reasonably request from time to time before, at or after the Closing, with respect to compliance with the obligations of CareFirst, CFAC, or Purchaser in connection with the Merger and the Conversion. Any information so furnished by the parties shall be true, correct and complete in all material respects and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

### **Section 6.5. Purchaser's Stockholders' Meetings.**

If a meeting of Purchaser's stockholders is required to comply with Purchaser's obligations under the rules of the NYSE, after the filing of the Plan of Conversion with the appropriate state regulatory bodies and prior to any final hearing thereon, Purchaser will take all steps necessary to duly call, give notice of, convene and hold a meeting of its stockholders (including filing with the SEC and mailing to its stockholders the Purchaser Proxy Statement) for the purpose of approving the stock issuance contemplated by this Agreement and the Merger and for such other purposes as may be necessary or desirable in connection with effectuating the transactions contemplated hereby and thereby. Subject to applicable law and compliance by Purchaser and CFAC with the material terms and conditions of this Agreement, the Board of Directors of Purchaser shall, if such vote is so required, recommend that its stockholders vote in

favor of and shall use its Best Efforts to obtain any necessary approval by the stockholders of Purchaser of the foregoing.

#### **Section 6.6. SEC and Stockholder Filings.**

Purchaser shall send to CareFirst copies of all public reports and materials as and when it sends the same to its stockholders or the SEC.

#### **Section 6.7. Consents, Waivers, Authorizations, etc.**

(a) Each of CareFirst and Purchaser will use its Best Efforts to obtain all consents, waivers, authorizations, orders and approvals of and make all filings and registrations with, any governmental commission, board or other regulatory body or any third party, required for, or in connection with, the performance by them of this Agreement and the consummation by them of the transactions contemplated hereby, or as may be required in order not to accelerate, violate, breach or terminate any agreement to which either party or any of their respective Subsidiaries may be subject. Each party will cooperate fully with each other party in assisting it to obtain such consents, authorizations, orders and approvals. The parties will not take any action which could reasonably be anticipated to have the effect of delaying, impairing or impeding the receipt of any required approvals, regulatory or otherwise.

(b) Without limiting the generality of the foregoing, the parties agree that Purchaser shall make such filings as are required in connection with this Agreement and the transactions contemplated hereby on its behalf, including the "Form A" regulatory filings to be made with the appropriate state regulatory bodies and shall coordinate the conduct of the hearing or hearings before the appropriate regulator in each such jurisdiction in connection with such filings. The hearings referred to in the preceding sentence are referred to individually as "Hearing" and collectively as the "Hearings." CareFirst and Purchaser will reasonably cooperate with regard to the content of the filings referred to in the first sentence of this Section 6.7(b). CareFirst and Purchaser, as the case may be, shall submit all such filings and hearing testimony, witness lists and other similar materials relating to the hearing to the other for its review prior to filing. Purchaser agrees to appeal any adverse findings in connection with any orders issued as a result of the Hearings and to use its Best Efforts in pursuing such appeal (assuming that Purchaser, and not CareFirst, is the appropriate party to file such appeal). CareFirst and Purchaser will reasonably cooperate with regard to such appeal.

#### **Section 6.8. Conversion of Primary CareFirst Companies.**

As soon as practicable after the date of this Agreement, the Primary CareFirst Companies shall take all appropriate and necessary steps so that, immediately prior to the Merger, the Primary CareFirst Companies shall convert from non-stock membership corporations to stock corporations and from not-for-profit status to for-profit status (collectively, the "Conversion"). In connection with the Conversion, CareFirst shall apply for the Private Letter Ruling. Prior to the submission of such ruling request, CareFirst will consult with Purchaser regarding the pertinent factual representations to be made in connection with such ruling request and

subsequent supplemental submissions and shall provide Purchaser with a draft of the ruling request for Purchaser's review and comment, and all reasonable comments shall be incorporated into such ruling request.

#### **Section 6.9. Liability; Indemnification.**

From and until six years after the Effective Time:

(a) CareFirst shall, and Purchaser shall cause CareFirst and the CareFirst Subsidiaries to, keep in full force and effect and honor any provisions in their respective charters and bylaws providing for immunity from monetary liability for, exculpation of liability for, and indemnification of, present or former trustees, directors, officers, fiduciaries, employees or agents as in effect immediately prior to the Closing, which provisions will not be amended, repealed or otherwise modified except as required by applicable law, or except for changes permitted by law that would enlarge the rights under such provisions; or would not adversely affect the rights thereunder, of individuals who, on or prior to the Closing Date, were trustees, directors, officers, fiduciaries, employees or agents of CareFirst or the CareFirst Subsidiaries, as the case may be.

(b) CareFirst shall, and Purchaser shall cause CareFirst and the CareFirst Subsidiaries to, maintain in effect, liability insurance against claims asserted based on acts or omissions occurring at or prior to the Closing covering those persons who are currently covered by CareFirst's or the CareFirst Subsidiaries' (as the case may be) liability insurance policy or policies, on terms substantially as favorable as the terms of such insurance coverage in effect as of the date hereof, so long as, on a cumulative basis over a period of the required six years the effective average annual premium for such coverage would not be in excess of 200% of the last annual premium paid prior to the date of Closing (the "Current Premium"). If the average annual premiums for such insurance would at any time exceed 200% of the Current Premium, then Purchaser shall cause to be maintained policies of insurance that provide the maximum coverage available at an average annual premium equal to 200% of the Current Premium.

(c) In the event Purchaser, CareFirst or any CareFirst Company or any of their respective successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of their respective properties and assets to any person, then, and in each such case, proper provision will be made so that the successors and assigns of Purchaser, CareFirst and any CareFirst Company, as the case may be, will assume the obligations set forth in Sections 6.9(a) and (b) if they are not otherwise assumed by operation of law.

(d) This Section 6.9: (i) will survive the Closing; (ii) is intended to benefit each CareFirst Company, and the individuals who at or before the Closing were trustees, directors, officers, fiduciaries, employees and agents of any CareFirst Company, and their respective heirs, executors, administrators, representatives and successors; and (iii) is in addition to, and not in substitution for, any other rights to immunity, exculpation, indemnification, contribution or insurance that any such individual may have by contract or otherwise.

#### **Section 6.10. Hart-Scott-Rodino Notification.**

Each of CareFirst and Purchaser shall prepare and file on a date agreed to by the parties a notification with the DOJ and the FTC as required by the HSR Act. Each party shall cooperate with each other party in connection with the preparation of such notification, including sharing information concerning sales and ownership and such other information as may be needed to complete such notification. The parties further agree to cooperate with one another to the extent necessary to comply with any requests by the DOJ or the FTC under the HSR Act for additional information arising from the notification. Each party shall keep confidential all information about the other party obtained in connection with the preparation of such notification or response to requests for additional information.

#### **Section 6.11. Further Assurances.**

Subject to the terms and conditions herein provided, each of CareFirst and Purchaser agrees to use its Best Efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement, including (a) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, (b) obtaining all governmental consents acquired for the consummation of the Merger, the Conversion and the transactions contemplated hereby, and (c) making all necessary filings under the HSR Act. Upon the terms and subject to the conditions hereof, each of the parties agrees to use its Best Efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary to satisfy the other conditions of the Closing set forth herein. Each party will consult with counsel for the other party as to, and will permit such counsel to participate in, at such other party's expense, any lawsuits or proceedings referred to in clause (a) above brought against any party. In case at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, the officers and directors of the Surviving Corporation shall take all such necessary action to the extent not inconsistent with their other duties and obligations or applicable law.

#### **Section 6.12. Public Announcements.**

So long as this Agreement is in effect, each of CareFirst and Purchaser shall not and shall cause their affiliates not to issue or cause the publication of any press release or any other announcement with respect to the Merger, the Conversion, or the transactions contemplated by this Agreement without the prior consent of the other party, except where such release or announcement is required by applicable law or pursuant to any listing agreement with, or the rules or regulations of, the SEC or the NYSE, in which case each of CareFirst and Purchaser will permit review by the other of any such press release or announcement prior to its release or filing and shall deliver simultaneously a final copy of such release or announcement to the other upon its release or filing. CareFirst and Purchaser agree to coordinate their initial press releases announcing the execution of this Agreement.

**Section 6.13. Appointment of Director of Purchaser; Management Issues.**

(a) Effective as of Closing, the Purchaser (after consultation with CareFirst) will nominate for election one non-employee member of the existing Board of Directors of CareFirst to serve on the Purchaser's Board of Directors and will use Best Efforts to have the CareFirst designee appointed or elected to the Purchaser's Board of Directors. [In the event that at that time, the Purchaser's Board of Directors shall have one or more classes of directors which have fewer members than one or more other classes of directors, the CareFirst designee shall be nominated to whichever class with fewer directors provides for the longest initial term for the CareFirst director.]

(b) [Management responsibility provision.]

(c) An advisory board will be formed for each of BCBS-NCA, BCBS-MD and BCBSD. Each person who serves as a director of one those companies at Closing, subject to such person's acceptance of such appointment, will serve on the advisory board for that company, and the current directors of CareFirst who do not currently serve on the Board of BCBS-NCA, BCBS-MD or BCBSD, subject to such person's acceptance of such appointment, will be appointed to serve on one of the advisory boards, as designated by CareFirst. Each advisory board will provide guidance to its respective company regarding the company's relationship with subscribers (both group and non-group), providers and the general public. Each director appointed to an advisory board shall serve for a term of two years from the Closing on the same terms and conditions currently applicable to such person's service on the Board of Directors of CareFirst, BCBS-NCA, BCBS-MD or BCBSD as of the date hereof.

**Section 6.14. Non-Solicitation.**

So long as this Agreement is in effect, no CareFirst Company shall, and each shall use its Best Efforts to cause its representatives not to, directly or indirectly, solicit any proposal from a third party regarding a purchase, affiliation, or lease of all or a material part of the assets of CareFirst, whether by sale of capital stock, merger, consolidation, sale or lease of material assets, affiliation, joint venture, or other material transaction (a "Merger Proposal"). Neither the foregoing prohibition nor any other provision of this Agreement shall be interpreted to prohibit CareFirst from (a) making any disclosure of information required by law, or (b) providing information regarding CareFirst to, or negotiating with, any third party (provided such party is subject to an executed confidentiality agreement) that makes an unsolicited written Merger Proposal; provided, however, that prior to any such action referred to in clause (b), (i) the Board of Directors of CareFirst shall have determined in good faith after consultation with its outside legal counsel and financial advisors that such Merger Proposal, if accepted by CareFirst on substantially the terms presented, is likely to be consummated and would, if consummated, result in a transaction superior to the one contemplated by this Agreement after taking into account all relevant factors, including, without limitation, the consideration to be received pursuant to such Merger Proposal (any such superior Merger Proposal being referred to herein as a "Superior Proposal") and (ii) CareFirst shall have promptly informed Purchaser of any such Merger

Proposal and shall have delivered a copy of the Merger Proposal, or otherwise disclosed the material terms of the Merger Proposal, to Purchaser.

#### **Section 6.15. Resale Registration Statement.**

As soon as practicable after the date of this Agreement, Purchaser shall file with the SEC and shall use its Best Efforts to have cleared by the SEC, the Resale Registration Statement to register under the Securities Act the shares of Purchaser Common Stock to be issued in the Merger for resale by the Tax-Exempt Entities after the Closing. CareFirst will provide all information, financial and otherwise, concerning CareFirst as may be needed in the Resale Registration Statement. Purchaser and CareFirst shall use their Best Efforts to comply, prior to the Effective Time, with all applicable requirements of federal and state securities laws in connection with the Merger and the issuance of Purchaser Common Stock in connection therewith. In addition, Purchaser shall promptly file all appropriate applications with the NYSE to have the Purchaser Common Stock approved for listing on the NYSE upon notice of issuance.

#### **Section 6.16. Accountant's Letter.**

Upon reasonable notice, CareFirst shall use its Best Efforts to cause its independent public accountants to deliver to Purchaser a letter dated within two (2) business days prior to the effective time of the Resale Registration Statement, covering such matters reasonably requested by Purchaser as are customarily addressed in accountants' "comfort" letters.

#### **Section 6.17. Transaction Objectives.**

After the Closing, CareFirst and the Purchaser shall use their respective Best Efforts to achieve the following objectives:

- (i) create an enterprise that reflects and takes advantage of the proportionate strengths, contributions, resources and prospects of each of the parties in a logical, progressive step consistent with sound business practice;
- (ii) enhance the offering of competitive Blue Cross Blue Shield and other related health care products for Delaware, the District of Columbia, Maryland, Virginia and any other jurisdiction which may come under CareFirst's control pursuant to Section [6.13(b)] herein;
- (iii) provide to a significant portion of the workforce of the CareFirst Companies continued employment within each Company's current service area, as well as opportunities for employment with other of the parties within the entire area serviced by the parties, collectively;
- (iv) create a collective enterprise which will provide additional financial strength for the customers of each of the parties, will allow each of the

parties access to necessary capital to support strategic initiatives and will position the collective enterprise as a more significant regional competitor;

- (v) allow the Primary CareFirst Companies to continue as separate corporations subject to local regulation and with a significant level of local operational control;
- (vi) create an organizational structure for the Primary CareFirst Insurers that retain key employees of each; and
- (vii) cause, allow and assist the Primary CareFirst Insurers to continue to maintain a significant presence within their respective jurisdictions, including the operation of facilities located in each jurisdiction, the maintenance of the corporate headquarters of each within their respective jurisdictions and the provision of products and services to residents in their respective jurisdictions.

#### Section 6.18. Employee Benefits

[To be discussed.]

### ARTICLE VII

#### *Conditions*

#### Section 7.1. Conditions to Each Party's Obligations.

The respective obligation of each party to effect the Merger and the other transactions to be effected contemporaneous with or as a result of the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following conditions:

(a) *Conversion.* The Conversion shall have occurred substantially on the terms set forth on Appendix A.

(b) *Stockholder Approval.* If required, this Agreement and the Merger shall have been approved at or prior to the Effective Time by the requisite vote of the stockholders of Purchaser in accordance with generally applicable law and the Certificate of Incorporation and Bylaws of Purchaser.

(c) *No Injunction.* No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consumption of the transactions contemplated hereby and which has not been stayed or vacated by the Effective Time. Each of CareFirst, CFAC, and Purchaser shall use its Best Efforts and shall cooperate with each other to